

REMARKS

Reconsideration of the application, as amended, is respectfully requested. In addition, Applicants acknowledge with appreciation the Examiner's indication in the instant Office Action that claims 17-22 have been allowed.

I. STATUS OF CLAIMS

Claims 17-22 and 33-34 are pending in this application. Claims 17-22 have been allowed. Claims 1-8 and 27-29 have been canceled without prejudice. Claim 31 has been amended to into an independent claim to include all of the limitation of its base claim, i.e. original claim 27, in order to secure allowance of this claim. New claims 33 and 34 have been added. It is respectfully submitted that no new matter has been added by virtue of this amendment. Support for the new claims and the amended claims are found throughout the specification as originally filed.

II. 35 U.S.C. § 103(a)

The Examiner rejected claims 1-8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,846, 117 to McGaffigan ("the McGaffigan patent"), U.S. Patent No. 4,813,905 to Yamaguchi et al. ("the Yamaguchi patent"), or U.S. Patent No. 4,193,223 to D'Andrade et al. ("the D'Andrade patent").

According to the Examiner, either of the above references appears to teach all of the elements of the above claims, with possibly the exception of the switch recited in claim 1. However, the Examiner took the position that the missing features are conventional and according to the Examiner it would have thus been obvious to provide the toys of the above cited references with these missing features in order to make the toys more interesting to play with.

In response, Applicants respectfully assert that the McGaffigan, the Yamaguchi, and the D'Andrade patents alone or in combination fail to teach or suggest the presently claimed invention as recited in claims 1-8.

Notwithstanding the above, in order to expedite the prosecution of the present application, Applicants have canceled claims 1-8 herewith without prejudice.

Accordingly, the above rejection to claims 1-8 is now moot.

III. REJECTIONS UNDER 35 U.S.C. § 102(b)

The Examiner rejected claims 27-29 under 35 U.S.C. § 102(b) as being anticipated by the McGaffigan patent. The Examiner alleges that the McGaffigan patent shows a car and a track having all of the features of the claims. Further, the Examiner objected to claim 31 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, Applicants respectfully assert that the McGaffigan patent fails to teach or suggest the presently claimed invention as recited in claims 27-29.

Nevertheless, in order to expedite the prosecution of the present application, Applicants have canceled claims 27-29 herewith without prejudice.

Thus, the above rejection to claims 27-29 is now moot.

With regard to the Examiner's rejection to claim 31, this claim (claim 31) has been amended into an independent claim to include all of the limitation of its base claim, i.e. original claim 27. Thus, claim 31 is now in condition for allowance.

Finally, since new claims 33 and 34 depend from and incorporate the limitations of amended claim 31, these claims are likewise patentable over the McGaffigan, the Yamaguchi, and the D'Andrade patents alone or in combination.

V. CONCLUSION

In view of the actions taken and arguments made it is believed that all pending claims as currently presented are now in condition for allowance. A Notice of Allowance is respectfully requested.

According to currently recommended Patent Office policy, the Examiner is requested to contact the undersigned at the telephone number provided below in the event that a telephone interview will advance the prosecution of this application. An early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard B. Klar', is written over a horizontal line.

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